



CALIFORNIA FARM BUREAU FEDERATION

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Sent via E-Mail

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February 18, 2014

Margaret Wong
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

Re: *Comments on the Tentative Draft WDRs/MRP for Rice Growers Within the Sacramento Valley*

Dear Ms. Wong:

The California Farm Bureau Federation (“Farm Bureau”) is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home, and the rural community. Farm Bureau is California’s largest farm organization, comprised of 53 county Farm Bureaus currently representing more than 74,000 agricultural, associate, and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California’s resources.

Farm Bureau appreciates the opportunity to provide comments on the tentative draft of the Waste Discharge Requirements and Monitoring and Reporting Program for Rice Growers in the Sacramento Valley (collectively “Tentative WDR”) and respectfully presents the following remarks. Many of the comments raised in Farm Bureau’s previous letter on the Draft WDR, dated September 13, 2013, are still pertinent, and are incorporated and reiterated herein.

General Order Page 1, Finding 1—Definition of “Waste”

The Draft WDR seeks to regulate discharges of “waste” from irrigated lands. As referenced in the footnote to Finding 1, Attachment E defines the term “waste” to not only include the statutory definition found in Water Code section 13050(d), but also adds additional language to include the regulation of “earthen materials..., inorganic materials..., organic materials such as pesticides, and biological materials” as wastes which “may directly impact beneficial uses...or may impact water temperature, pH and dissolved oxygen.” (Tentative WDR, Attachment E, p. 6.) No rationale is provided for the overly broad expansion of a statutorily defined term; as such, the term “waste” should be limited to its definition found in Water Code section 13050(d). To provide clarity and conformance with

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Water Code section 13050(d), Farm Bureau offers revising the second sentence of the definition of “waste” to read (additions are underlined):

“Potential examples of wastes from irrigated lands that may conform to this definition include, but are not limited to, earthen materials (such as soil, silt, sand, clay, rock), inorganic materials (such as metals, salts, boron, selenium, potassium, nitrogen, phosphorus), organic materials such as pesticides, and biological materials, such as pathogenic organisms.”

General Order Page 1, Finding 3—Regulation of Water Quality

The Tentative WDR amends the scope of regulatory coverage by not including specific provisions limiting the regulation of water traveling through particular structures. (Tentative WDR, p. 1.) The current scope of coverage causes concern regarding the regulation of on-farm conveyances and between-farm conveyances, causing potential ambiguity regarding the point of demarcation for regulation; as currently written, the regulation could be read to regulate any water that leaves the root zone whether or not it reaches saturated groundwater. In order to provide clarity, Finding 5 should be revised.¹

General Order Pages 9-10, Findings 29-33—Compliance with the California Environmental Quality Act

The Tentative WDR relies upon the environmental analysis conducted in the Program Environmental Impact Report (“PEIR”) and concludes that “[a]lthough the Order is not identical to any of the PEIR alternatives, the Order is comprised entirely of elements of the PEIR’s wide range of alternatives.” (Tentative WDR, p. 9, ¶ 30. *see also id.* at ¶ 31.) Relying on such analysis, the Tentative WDR further concludes “the PEIR identified, disclosed, and analyzed the potential environmental impacts of the Order” and the “potential compliance activities undertaken by the regulated Dischargers...fall within the range of compliance activities identified and analyzed in the PEIR.” (*Id.* at ¶ 30.) However, the Tentative WDR, or its estimated costs, is not within the realm of alternatives analyzed within the PEIR, but rather goes beyond those alternatives by including provisions substantially different from elements in those alternatives, especially alternatives 3 through 5. These new components, such as provisions creating end-of-field discharge limitations, as well as the farm management performance standards, in addition to the associated costs, do not represent merely a “variation” on the alternatives in the PEIR, but rather are elements that were not thoroughly considered previously and are likely to result in the imposition of new burdens on irrigated

¹ Finding 5 could be potentially revised to state: “This Order is not intended to regulate water in agricultural fields, including, but not limited to, furrows, beds, checks, and ancillary structures, contained on private lands associated with agricultural operations. This Order is not intended to address the lawful application of soil amendments, fertilizers, or pesticides to land.” Additionally or in the alternative, the following phrase, “from which there are discharges of waste that could affect the quality of any waters of the state,” could be added to Finding 5 to clarify that the WDR is not regulating water that moves past the root zone when there is no threat to waters of the state or that the movement of water below the root zone is a de facto discharge of waste.

agricultural operations that will have a significant and cumulatively considerable impact on the environment. Thus, reliance on the PEIR for CEQA compliance is inappropriate.² In order to comply with CEQA, the Regional Board should prepare a supplemental EIR that analyzes the new elements along with revised cost estimates.

General Order Pages 11-12, Finding 36-37—California Water Code Sections 13141 and 13241

Pursuant to the Water Code, the Regional Board is obligated to consider costs associated with the entire Long-Term Irrigated Lands Regulatory Program, as well as each individual general order, such as the Rice Growers WDR. (Wat. Code, § 13141.) Finding 36 incorrectly concludes that any new cost analysis is unnecessary given that “the Basin Plan includes an estimate of potential costs and sources of financing for the *long-term irrigated lands program*.” (Tentative WDR, p. 11, ¶ 36, emphasis added.) Although the Basin Plan was amended to include costs associated with the *long-term irrigated lands program*, the Basin Plan Amendment did not include specific costs associated with the Rice Growers WDR as it was not in existence at the time nor were the specific program requirements analyzed (such as the templates and individual reporting summarized by the third-party). Given that this Tentative WDR proposes new costly regulatory components not previously analyzed during the environmental review stage or when adopted in the Basin Plan, the Regional Board must analyze, evaluate, and estimate all of the costs of these new regulatory requirements.

General Order Page 18, Provisions III. A and III. B—Discharge Limitations

The use of “shall not cause *or contribute*” to an exceedance of applicable water quality objectives is overly expansive and can create an unreasonable standard holding growers liable for even the smallest de minimus contribution. Although Provision C was added to the Tentative Draft to provide additional clarity, the language in Provision A and B still creates an unreasonable standard. Accordingly, a qualifier should be added before “contribute,” or the discharge limitations for both surface water and groundwater should be rewritten to state “wastes discharged from Grower operations shall not cause an exceedance of applicable water quality objectives in surface water [or the underlying groundwater], unreasonably affect applicable beneficial uses, or cause a condition of pollution or nuisance.”

General Order Page 20, Provisions IV. B. 13—Inspection

Farm Bureau appreciates the addition of footnote 20 specifying “the inspection of Grower’s facilities and rice lands does not include the Grower’s private residence.”

General Order Page 26, Provision VIII. B—Template Requirements for Farm Evaluations and Nitrogen Management Plans

² Farm Bureau also questions the Regional Board’s authority to require mitigation measures within the Tentative WDR for farm level activities. Implementation of management practices at the farm level, which is the heart of the WDR, is not subject to a discretionary approval by the Regional Board. (See Pub. Resources Code, § 21080, CEQA generally applies only to discretionary projects.) Mitigation measures that cannot be legally imposed need not be proposed or analyzed. (CEQA Guidelines, § 15126.4(a)(5).)

Farm Bureau appreciates the inclusion of language to allow the California Rice Commission the ability to develop or modify the templates due to commodity-specific issues, including geographic area, known water quality impairments, the propensity to impact water quality, and irrigation practices. Such tailoring will allow the Regional Board to obtain the most relevant information specific to the area being regulated while also allowing growers to minimize costs.

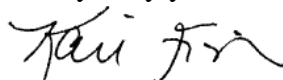
Attachment A, Information Sheet, Page 44—Spatial Resolution of Farm Evaluation Information; Attachment B, MRP, Page 6, Reporting Component 22

Reporting Component 22 outlines the process in which the California Rice Commission will collect management practice information from members and report the aggregate data to the Regional Board at the township level. As currently drafted, Farm Bureau supports the aggregate reporting of summarized information at the township level. Reporting at the township level allows the third-party group the ability to properly compare crop data, evaluate management trends, and manage the data in an efficient and effective manner.

In addition to aggregating and summarizing information collected in the Farm Evaluations at the township level, Reporting Component 22 further requires the California Rice Commission to provide the individual data records to the Regional Board. (Attachment B, p. 6 (*note, page numbers for Attachment B are out of order).) No explanation is given within the MRP or WDR to support the necessity of needing the individual data records. The comparison of data at the field level, with or without the identification of a member's parcel, is not supported and would not result in an efficient use of resources or the ability to assess and evaluate trends. Rather, the summary of management practices provided by the California Rice Commission will be more meaningful than the individual data records and will include the appropriate analysis needed by the Regional Board. Thus, Farm Bureau questions the need for the California Rice Commission to submit individual data records and suggests this addition to the management practices information reporting component be removed.

Thank you for the opportunity to provide our comments and concerns. We look forward to further involvement and discussion with the Regional Board on the WDR and MRP for Rice Growers within the Sacramento Valley.

Very truly yours,



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Associate Counsel

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